

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GUILLERMO F. GARCIA,

Plaintiff,

v.

WELLS FARGO,

Defendant.

No. CV-12-5019-EFS

**ORDER DENYING PLAINTIFF'S
MOTION FOR AN INJUNCTION AND
DENYING AS MOOT PLAINTIFF'S
DISCOVERY MOTION**

On July 17, 2012, a telephonic hearing was held in the above-captioned matter. Plaintiff Guillermo F. Garcia participated; and Robert Bocko appeared on behalf of Defendant Wells Fargo. Before the Court were Mr. Garcia's Request for a Temporary Restraining Order, ECF No. [20](#), Request for Defendant's Deadline to Answer 1st Interrogatories, ECF No. [21](#), and Request for Injunction, ECF No. [23](#).¹ After reviewing the record and relevant authority and hearing from Mr. Garcia and counsel, the Court was fully informed. This Order supplements and memorializes the Court's oral rulings.

A. Injunctive Requests

On June 7, 2012, Mr. Garcia filed a Request for Temporary

¹ A scheduling conference was also held. The Court will enter a separate Scheduling Order.

1 Restraining Order.² Then on June 13, 2012, he filed a Request for
2 Injunction. Both motions ask the Court to restrict Wells Fargo's
3 ability to make repairs to the subject residence in College Place,
4 Washington. Because Mr. Garcia superseded his initial temporary-
5 restraining-order motion, the Court denies his initial motion as moot.

6 Turning to Mr. Garcia's subsequent Request for Injunction, the
7 Court finds he failed to establish that a preliminary injunction is
8 appropriate. "A preliminary injunction is not a preliminary
9 adjudication on the merits: it is an equitable device for preserving the
10 status quo and preventing the irreparable loss of rights before
11 judgment." *Textile Unlimited v. A..bmhand Co.*, 240 F.3d 781, 786 (9th
12 Cir. 2001). "A plaintiff seeking a preliminary injunction must
13 establish that he is likely to succeed on the merits, that he is likely
14 to suffer irreparable harm in the absence of preliminary relief, that
15 the balance of equities tips in his favor, and that an injunction is in
16 the public interest." *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*,
17 559 F.3d 1046, 1052 (9th Cir. 2009).

18 Mr. Garcia failed to present any evidence to establish a finding
19 in his favor as to any of these factors. Mr. Garcia contends that he
20 must conduct discovery to do so. However, the Court may only enter a

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22 ² Mr. Garcia did not file a notice of hearing for this motion.

23 He was advised of this requirement previously in the Court's April
24 28, 2012 Order Addressing Case Status, ECF No. [3](#) at 2. On June 8,
25 2012, he was also sent a deficiency notice by the Clerk's Office
26 regarding his failure to file a notice of hearing.

1 preliminary injunction if Mr. Garcia is able to show that he is likely
2 to succeed on the merits, likely to suffer irreparable harm if Wells
3 Fargo conducts repairs on the residence, that the balance of equities
4 tips in his favor, and that the restriction on Wells Fargo's ability to
5 conduct repairs on the residence would be in the public interest. Mr.
6 Garcia failed to establish any of these requirements as he has not 1)
7 explained why he is not subject to the Washington Deed of Trust Act's
8 forfeiture contest procedure, see RCW 61.24.130(1) and *Plein v. Lacky*,
9 149 Wn.2d 214, 226 (2003) ("This statutory procedure is the only means
10 by which a grantor may preclude a sale once foreclosure has begun with
11 receipt of the notice of sale and foreclosure."); 2) addressed why he is
12 not bound by the Walla Walla Superior Court's ruling finding that the
13 foreclosure sale is valid and final; 3) addressed the fact that the
14 original Deed of Trust between he and his wife and Wells Fargo gave
15 Wells Fargo the contractual right to take steps to preserve the property
16 after default to prevent it from falling into disrepair, or 4) presented
17 any facts or legal argument to support his claims under the Truth in
18 Lending Act, 15 U.S.C. §§ 1635 & 1640, or his fraudulent omissions,
19 breach of contract, or bad faith claims. For these reasons, the Court
20 denies Mr. Garcia's Request for Injunction.

21 **B. Mr. Garcia's Discovery Request**

22 On June 8, 2012, Mr. Garcia filed a Request for Defendant's
23 Deadline to Answer 1st Interrogatories, ECF No. [21](#). Initially, Wells
24 Fargo opposed the motion because Mr. Garcia had not served Wells Fargo
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26

1 with a timely discovery request in this lawsuit³ and because the Court
2 in its April 27, 2012 Court Order had informed the parties that they
3 could not engage in discovery until the Federal Rule of Civil Procedure
4 26(f) conference was held, ECF No. [3](#) at 2 (quoting Fed. R. Civ. P.
5 26(d)). Mr. Garcia however later served Wells Fargo with a discovery
6 request in this lawsuit, noting that Wells Fargo could answer it within
7 thirty days of the scheduling conference. Wells Fargo agrees to answer
8 the recent discovery request no later than August 16, 2012. Given the
9 parties' agreement, the Court denies Mr. Garcia's discovery motion as
10 moot.

11 **C. Wells Fargo's Dispositive Motion**

12 On July 10, 2012, Wells Fargo filed a Motion to Dismiss and/or For
13 Summary Judgment, ECF No. [39](#). On that same date, the Clerk's Office
14 mailed to Mr. Garcia a Notice to Pro Se Litigants of the Dismissal
15 and/or Summary Judgment Rule, ECF No. [45](#). At the hearing, Mr. Garcia
16 stated that he needs to conduct discovery to respond to Wells Fargo's
17 motion. The Court encouraged Mr. Garcia to review the Local Rules and
18 Federal Rules of Civil Procedure, including Rules 56, and if necessary
19 to file a motion seeking the desired relief.

20 **D. Civility Code**

21 Mr. Garcia and counsel must abide by the Civility Code set forth
22 in Local Rule 83.1. A failure to "act with dignity, integrity, and
23 courtesy in oral and written communications" with the opposing party and
24 _____

25 ³ It was a discovery request served by Mr. Garcia in one of his
26 prior lawsuits: EDWA CV-10-5146-EFS and EDWA CV-11-5111-EFS.

1 their counsel may result in the imposition of sanctions. LR
2 83.1(k)(2)(a).

3 **E. Court Filings**

4 The Court again reminds Mr. Garcia that any document presented to
5 the Clerk's Office for filing shall utilize the caption and case number
6 set forth above. ECF No. 7 at 1. And all filed documents must contain
7 original signatures. ECF No. 3 at 2; see L.R. 10.1(a)(3) ("All
8 pleadings shall be signed as required by FED. R. Civ. P. 11."). Any
9 documents that fail to comply with these requirements will be returned
10 without filing. Plus, a motion must be accompanied by a separate notice
11 of hearing. LR. 7.1(h)(1). The Court will not hear a motion unless a
12 proper notice of hearing is filed.

13 **F. Conclusion**

14 For the above given reasons, **IT IS HEREBY ORDERED:**

15 1. Mr. Garcia's Request for a Temporary Restraining Order, **ECF**
16 **No. 20, is DENIED AS MOOT.**

17 2. Mr. Garcia's Request for Defendant's Deadline to Answer 1st
18 Interrogatories, **ECF No. 21, is DENIED AS MOOT.**

19 3. Mr. Garcia's Request for Injunction, **ECF No. 23, is DENIED.**

20 **IT IS SO ORDERED.** The District Court Executive is hereby directed
21 to enter this Order and furnish copies to Mr. Garcia and counsel.

22 **DATED** this 19th day of July 2012.

23
24 s/Edward F. Shea

EDWARD F. SHEA

25 Senior United States District Judge

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